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No. 86-259

In the Supreme Court of the United States

OCTOBER TERM, 1986

CITY OF DES MOINES, IOWA, NICK BROWN, and LARRY BEDFORD,
Petitioners,

vs.

ROBERT L. WILLSON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Robert L. Willson, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the Supreme Court of Iowa in this case. That opinion is reported at 386 N.W. 2d 76 (Iowa 1986), and was reproduced as Appendix A to the petition for writ of certiorari.

JURISDICTION

Petitioners[1] assert that this Court's jurisdiction is invoked under 28 U.S.C. § 1257(3). (Pet. 2). The Supreme Court of Iowa's holding that the existence of state law remedies does not preclude Robert L. Willson's § 1983 ac-

1. Petitioners, City of Des Moines, Iowa, Nick Brown and Larry Bedford, are hereafter collectively referred to as "the City."

tion in state court is premised upon an independent and adequate state law ground. The City, by its own admission, has "from the inception of this case challenged [Willson's] § 1983 action on three grounds: . . . (3) Iowa Code Chapter 613A provides the *exclusive* remedy for any civil wrong such as Willson's in Iowa state courts against a municipality or one of its officers. Iowa Code § 613A.4." (Pet. 10-11). The Supreme Court of Iowa's conclusion that Willson's § 1983 claim was proper in the Iowa courts is a clear rejection of the City's argument that Iowa Code Chapter 613A is exclusive.[2] This rejection of Chapter 613A's exclusivity is a question of state law providing an independent and adequate state law ground for the Supreme Court of Iowa's holding. Therefore, the City's reliance on 28 U.S.C. § 1257(3) for this Court's jurisdiction is erroneous. *Klinger v. Missouri*, 13 Wall. 257, 263 (1871).

REASONS FOR DENYING THE WRIT

1. The decision of the Supreme Court of Iowa is not in conflict with a decision of the Supreme Court of South Carolina.

The Supreme Court of Iowa held that 42 U.S.C. § 1983 provides an actionable independent remedy in state court for the deprivation of Willson's rights under the fourth amendment of the United States Constitution. (Pet. A20). The Supreme Court of Iowa observed that the availability of state law claims was irrelevant to the availability of Willson's § 1983 fourth amendment claim in state court. (Pet. A13). This decision in no way conflicts with the decision of the Supreme Court of South Carolina in *Spencer v.*

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2. The Supreme Court of Iowa clearly rejected "[the City's] claim that this state remedy provides adequate relief, and thus, [Willson's] action under section 1983 is foreclosed." (Pet. A10).

South Carolina Tax Commission, 281 S.C. 492, 316 S.E.2d 386 (S.C. 1984), *aff'd by an equally divided court,* 471 U.S. 82 (1985).

In *Spencer,* the Supreme Court of South Carolina held that the denial of certain state income tax deductions to non-residents of South Carolina violated the privileges and immunities clause of the United States Constitution, art. IV, § 2, cl. 1. *Spencer,* 316 S.E.2d at 387-88. The Supreme Court of South Carolina affirmed, with virtually no discussion, the trial court's failure to address plaintiff's § 1983 claim. *Id.* at 388-89.

The Supreme Court of Iowa accepted jurisdiction and passed upon the merits of Willson's § 1983 claim; the Supreme Court of South Carolina simply affirmed the trial court's unwillingness to address the § 1983 claim. There is, however, no conflict between these two decisions.

Whether or not the courts of South Carolina were obligated to entertain Spencer's § 1983 action is a question of some interest, previously reserved by this Court,[3] but is in no way raised by the decision below of the Supreme Court of Iowa. The Supreme Court of Iowa's affirmance of the availability of Willson's § 1983 claim in state court is entirely consistent with this Court's pronouncements in *Martinez v. California,* 444 U.S. 277, 283-84 n.7 (1980), and *Maine v. Thiboutot,* 448 U.S. 1, 3 n.1 (1980), that state courts may entertain § 1983 claims. These holdings belie the City's perplexing, unsupported and erroneous claim that "Congress did not intend to have § 1983 proceedings in state court." (Pet. 14).

There is simply no conflict between *Spencer* and the Supreme Court of Iowa's decision below. Moreover, these

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3. *Maine v. Thiboutot,* 448 U.S. 1, 3 n.1 (1980).

cases are clearly distinguishable on their facts. *Spencer* held that "[i]t may reasonably be inferred that the sole reason for alleging § 1983 was to justify the allowance of counsel fees." *Spencer,* 316 S.E.2d at 389. The purpose of Willson's § 1983 cause of action below was to allege an independent fourth amendment violation seeking, inter alia, punitive damages pursuant to *Smith v. Wade,* 461 U.S. 30 (1983), against the individual police officers. Indeed, the Supreme Court of Iowa specifically affirmed the jury award of $1,000.00 punitive damages under § 1983 against defendant Bedford. (Pet. A20). Punitive damages are unavailable under Iowa Code Chapter 613A (1985).[4] Thus, Willson was not utilizing § 1983 simply to justify the allowance of counsel fees.

In sum, the decision of the Supreme Court of Iowa is neither legally nor factually in conflict with *Spencer v. South Carolina Tax Commission,* 281 S.C. 492, 316 S.E.2d 386 (S.C. 1984), *aff'd by an equally divided court,* 471 U.S. 82 (1985).

2. The Supreme Court of Iowa has neither expanded the applicability of § 1983 nor is its holding in any way in conflict with this Court's prior precedents.

A. The Supreme Court of Iowa has not expanded the applicability of § 1983.

The City does not even suggest, let alone argue, that Willson's § 1983 claim, alleging violations of the fourth amendment of the United States Constitution, could not

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4. The Municipal Tort Claims Act, Iowa Code Chapter 613A (1985), which the City argues is the exclusive remedy for claims such as Willson's brought in state court (Pet. 7), specifically excludes punitive damages. Iowa Code § 613A.4(5) (1985).

have been brought in the federal district court. Indeed, no precedent of this Court, regardless of the availability of state law remedies, would foreclose Willson's § 1983 fourth amendment action in federal district court. Therefore, the decision by the Supreme Court of Iowa as to the applicability of a § 1983 action in its own state courts in no way expanded the applicability of § 1983. This Court has previously held that § 1983 actions may be properly brought in state court. *Martinez v. California,* 444 U.S. 277, 283-84 n.7 (1980); *Maine v. Thiboutot,* 448 U.S. 1, 3 n.1 (1980). A contrary holding would dramatically reduce state courts as a forum for litigating § 1983 claims. This would inevitably thrust putative state court litigants into, and impose a greater burden upon, the federal courts. *See, e.g., Patsy v. Florida,* 457 U.S. 496, 512 (1982).

B. The holding of the Supreme Court of Iowa does not in any way conflict with this Court's prior precedents.

The Supreme Court of Iowa concluded that "*Parratt* [*v. Taylor,* 451 U.S. 527 (1981)] does not apply to bar a section 1983 suit despite the availability of state post-deprivation remedies where the alleged deprivation violates specific Bill of Rights provisions." (Pet. A13). The court noted that *Parratt* "suggests that if a plaintiff has a post-deprivation state remedy available, due process may be satisfied." (Pet. A9). The Supreme Court of Iowa easily distinguished *Parratt* by noting that "[t]he *Parratt* doctrine only applies to claimed violations of procedural due process." (Pet. A11). The court went on to cite numerous federal courts that have clearly recognized the procedural due process/specific substantive constitutional rights distinction in applying the principles of *Parratt.* (Pet. A12 n.7). Nevertheless, the City makes the startling claim,

unsupported by any citation or rationale, that the holding by the Supreme Court of Iowa below "has eviscerated this Court's teaching in *Parratt.*" (Pet. 15). This is simply not so. This Court has never applied the principles of *Parratt* to substantive constitutional violations. Indeed, Justice Stevens recently noted that when pursuing a claim based upon one of the specific constitutional guarantees of the Bill of Rights, "the plaintiff may invoke § 1983 regardless of the availability of a state remedy." *Daniels v. Williams,* ..... U.S. ....., 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

The decision of the Supreme Court of Iowa below neither expanded the applicability of § 1983 nor contravened any prior precedent of this Court. Indeed, the holding below is entirely consistent with both *Parratt* and *Daniels.*

CONCLUSION

The Iowa Supreme Court's determination that the availability of a § 1983 action in its own state courts is not precluded by the existence of other state law remedies is a question of state law providing an independent and adequate state law ground depriving this Court of jurisdiction. Failing that, the decision of the Supreme Court of Iowa is not in conflict with the decision of the Supreme Court of South Carolina, nor has the Supreme Court of Iowa expanded the applicability of § 1983, nor does its holding in any way conflict with this Court's prior precedents. Therefore, respondent Robert L. Willson respectfully requests that the petition for writ of certiorari to the Supreme Court of Iowa be denied.

Respectfully submitted,

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